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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/537,812	03/28/2000	Russell W. White	111111.1111	4698

7590 02/07/2005  
Russell W White  
10704 Redmond  
Austin, TX 78739

EXAMINER

PEREZ GUTIERREZ, RAFAEL

ART UNIT	PAPER NUMBER
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2686

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/537,812

Applicant(s)

White et al.

Examiner

Rafael Perez-Gutierrez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11,14-16,18-21,23,26,27,29,31,32 and 34-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11,14-16,18-21,23,26,27,29,31,32 and 34-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This Action is in response Applicant's amendment filed on September 1, 2004. **Claims 11, 14-16, 18-21, 23, 26, 27, 29, 31, 32, and 34-39** are now pending in the present application.

**This Action is made FINAL.**

### ***Drawings***

2. The replacement drawing sheets received via facsimile transmission on September 1, 2004 are acknowledged by the Examiner. However, replacement drawing sheets submitted via facsimile transmission are not acceptable due to their poor quality. The Examiner suggests the Applicant to mail the replacement drawing sheets to the Office.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office Action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

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Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the Examiner, the Applicant will be notified and informed of any required corrective action in the next Office Action. If a response to the present Office Action fails to include proper drawing corrections, corrected drawings or arguments therefor, the response can be held **NON-RESPONSIVE** and/or the application could be **ABANDONED** since the objections/corrections to the drawings are no longer held in abeyance.

#### ***Claim Objections***

4. **Claims 14, 21, and 23** are objected to because of the following informalities:
- a) On **lines 2 and 3 of claim 14**, insert --web-- before “browsing”;
  - b) On **line 2 of claim 21**, replace “communications” with --communication-- after “short-range”; and
  - c) On **line 2 of claim 23**, replace ““Bluetooth”” with --Bluetooth-- after “a”.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in

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section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claims 11, 14-16, 18-20, 23, 26, 27, 29, 31, 32, and 34-39** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Baughan (U.S. Patent # 6,510,210 B1)** in view of **Shanahan (U.S. Patent # 6,496,692 B1)**, both newly cited.

Consider **claim 11**, Baughan clearly shows and discloses a method for communicating selected audio information (e.g., MP3 audio files (column 2 lines 50-52, column 3 lines 33-39, and column 4 lines 4-9) to a consumer (electronic) device 10, 30, 50 (figures 2, 3 and 5), the

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method comprising:

maintaining data (e.g., music titles) associated with selectable audio information (e.g., MP3 audio files) (column 3 lines 33-39 and column 5 lines 20-27);

communication information associated with the selectable audio information (e.g., a menu and menu item selection data associated with, for example, MP3 files) for presentation within a graphical user interface (GUI) of a web browser (i.e., the consumer (electronic) device 10, 30, 50 includes a display screen and selections buttons (reads on the GUI) that allow the user to browse through the selectable audio information located in a remote application server 21 (figure 2) (reads on the web browser) and select the desired information) (figures 2, 3, and 5, column 2 lines 3-9 and 36-41, column 3 lines 24-53, column 4 lines 36-51 and 58-63, column 5 lines 36-45, column 6 lines 52-59, and column 7 lines 23-38);

receiving an input from a user identifying the selected audio information (e.g., selection of an MP file) (column 2 lines 47-56, column 3 line 66 - column 4 line 17, column 4 lines 30-51 and 58-63, and column 5 lines 36-45), the selected audio information comprising a MP3 music file configure to be stored within a store (memory) of the consumer (electronic) device 10, 30, 50 operable to play and pause the MP3 music file in response to an incoming telephone call (figures 2, 3, and 5, column 2 lines 47-56, column 4 lines 30-51, column 4 line 58 - column 5 line 2, and column 6 lines 52-67);

receiving information identifying the consumer (electronic) device 10, 30, 50 (e.g., subscription information that validates the user's access to the selected audio information) (column 4 lines 21-29 and column 5 lines 20-27 and 46-49);

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initiating wireless communication of the selected audio information (e.g., selected MP3 files) to the consumer (electronic) device 10, 30, 50 (column 1 lines 43-65, column 2 lines 36-41, column 3 lines 24-39, column 4 lines 30-51, and column 5 lines 3-45).

Although, Baughan further discloses that the consumer (electronic) device 10, 30, 50 can be a combined mobile (cellular) telephone/MP3 player (column 1 lines 13-22, column 2 lines 48-59, and column 7 lines 12-42), Baughan does not specifically disclose that the incoming telephone call is an incoming cellular telephone call.

In the same field of endeavor, Shanahan clearly show and discloses an electronic device operable to play a music file in response to an incoming wireless (cellular) telephone call (abstract, figures 1 and 5-7, column 2 line 65 - column 3 line 40, column 7 line 60 - column 8 line 5, column 8 line 64 - column 9 line 2, and column 9 line 61 - column 10 line 17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to, in response to an incoming cellular telephone call as taught by Shanahan, play and pause a music file in the device taught by Baughan for the purpose of answering an incoming cellular telephone call.

Consider **claim 14**, and **as applied to claim 11 above**, Baughan, as modified by Shanahan, further disclose that the interface operates in the web browsing environment (i.e., since the MP3 audio files are stored in remote application server 21) and the wireless communication operates outside the browsing environment (figures 2, 3, and 5, column 2 lines 3-9 and 36-41, column 3 lines 24-53, column 4 lines 36-51 and 58-63, column 5 lines 36-45, column 6 lines 52-59, and column 7 lines 23-38) and the music file has an MP3 format (column

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2 lines 51-53 and column 3 lines 33-39).

Consider **claim 15**, and **as applied to claim 11 above**, Baughan clearly shows and discloses the claimed invention except that the wireless communication comprises communicating via a cellular communications network.

In the same field of endeavor, Shanahan clearly show and discloses an electronic device operable to download selected audio information (e.g., music files) via a wireless (cellular) communications network (column 2 line 65 - column 3 line 40).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to communicate the selected audio information via a cellular communications network as taught by Shanahan in the method taught by Baughan for the purpose of providing the selected audio information to cellular telephone subscribers.

Consider **claims 16, 29, and 32**, Baughan clearly shows and discloses a consumer (electronic) device 10, 30, 50 (figures 2, 3 and 5) for receiving selected audio information (e.g., MP3 audio files or MP3 streaming audio (reads on claims 29 and 32)) (column 2 lines 50-52, column 3 lines 33-39, and column 4 lines 4-9) via wireless communication (column 3 lines 24-39 and column 4 lines 30-51), the consumer (electronic) device 10, 30, 50 comprising:

a short-range RF communication module 102 operably coupled to a processor module (i.e., media agents 103 and device controllers 105) (figures 2 and 3, column 3 lines 24-39 and 44-53, and column 4 lines 30-35);

a store (storage medium) (figures 2 and 3) operable to store selected audio information that comprises an MP3 audio file (column 2 lines 47-56 and column 4 lines 30-51);



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the processor module (i.e., media agents 103 and device controllers 105) (figures 2 and 3) coupled to the store (storage medium) and operable to stop an in process playing of the MP audio file in response to receiving an incoming telephone call (column 4 line 58 - column 5 line 2); and a display operable to display a web browser within a user interface 101 (figures 2 and 3, column 2 lines 3-9 and 36-41, column 3 lines 24-53, column 4 lines 36-51 and 58-63, column 5 lines 36-45, column 6 lines 52-59, and column 7 lines 23-38).

Although, Baughan further discloses that the consumer (electronic) device 10, 30, 50 can be a combined mobile (cellular) telephone/MP3 player (column 1 lines 13-22, column 2 lines 48-59, and column 7 lines 12-42), Baughan does not specifically disclose a long-range communication module operable to receive wireless communication information.

In the same field of endeavor, Shanahan clearly show and discloses an electronic device 500 comprising, among other components, a receiver/transmitter circuit 520 (long-range communication module) operable to receive wireless communication information (figure 7 and column 9 line 61 - column 10 line 21).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a long-range communication module as taught by Shanahan in the device taught by Baughan for the purpose of providing cellular telephone communications.

Consider **claim 18**, and **as applied to claim 16 above**, Baughan clearly shows and discloses the claimed invention except that the processor is operable to play a different audio file in response to receiving the incoming telephone call.

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In the same field of endeavor, Shanahan clearly show and discloses an electronic device operable to play different music (audio) files in response to receiving incoming telephone calls in order to identify callers (abstract, figures 1 and 5-7, column 2 line 65 - column 3 line 40, column 7 line 60 - column 8 line 5, column 8 line 64 - column 9 line 2, and column 9 line 61 - column 10 line 17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to play a different audio file in response to receiving an incoming telephone call as taught by Shanahan in the device taught by Baughan for the purpose of identify a caller.

Consider **claim 19**, and **as applied to claim 16 above**, Baughan, as modified by Shanahan, further disclose that the processor module (i.e., media agents 103 and device controllers 105) (figures 2 and 3) outputs an audio signal indirectly to an audio speaker in connection with playing the audio file (figures 2 and 3, column 2 lines 48-56, column 3 lines 44-53, and column 4 lines 30-51).

Consider **claim 20**, and **as applied to claim 16 above**, since the device 10, 30 of Baughan, as modified by Shanahan, has music playing capabilities (column 2 lines 48-56 and column 4 lines 58-67), it is clearly inherent that software for processing the selected information is included in the device 10, 30.

Consider **claim 23**, and **as applied to claim 16 above**, Baughan, as modified by Shanahan, further disclose that the short-range RF communication module 102 is operable with the Bluetooth communication standard (column 3 lines 24-39 and column 4 lines 30-35).

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Consider **claims 26 and 27**, and **as applied to claim 16 above**, Baughan, as modified by Shanahan, further disclose that the consumer (electronic) device 10, 30, 50 (figures 2, 3, and 5) is a cordless (wireless) telephone operable to communicate with a short-range RF communication network such as DECT (column 3 lines 24-39, column 4 lines 30-35 and 58-67, and column 6 lines 52-67).

Consider **claim 31**, and **as applied to claim 26 above**, Baughan, as modified by Shanahan, discloses the claimed invention except that the long-range communication module is operable to receive the incoming telephone call.

In the same field of endeavor, Shanahan also show and discloses an electronic device 500 comprising, among other components, a receiver/transmitter circuit 520 (long-range communication module) operable to receive an incoming telephone call (figure 7 and column 9 line 61 - column 10 line 21).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive the incoming telephone call via a long-range communication module as taught by Shanahan in the device taught by Baughan for the purpose of providing cellular telephone communications.

Consider **claims 34 and 36**, Baughan clearly shows and discloses a consumer (electronic) device 10, 30, 50 (figures 2, 3 and 5) for communicating selected audio information (e.g., MP3 audio files) (column 2 lines 50-52, column 3 lines 33-39, and column 4 lines 4-9) via wireless communication (column 3 lines 24-39 and column 4 lines 30-51), the consumer (electronic) device 10, 30, 50 comprising:

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a short-range RF communication module 102 operable to communicate at about 2.4 GHz (inherent since it communicates using Bluetooth) (figures 2 and 3, column 3 lines 24-39 and 44-53, and column 4 lines 30-35);

a store (storage medium) (figures 2 and 3) operably coupled to a communication module 102 and operable to store the selected audio information (column 2 lines 47-56 and column 4 lines 30-51); and

the processor module (i.e., media agents 103 and device controllers 105) (figures 2 and 3) operable to alter a playing of the selected audio information in association with an incoming telephonic communication (column 4 line 58 - column 5 line 2),

wherein the store (storage medium) and the short-range RF communication module 102 are encased within the device 10, 30 (figures 2 and 3 and column 3 lines 24-53).

Although, Baughan further discloses that the consumer (electronic) device 10, 30, 50 can be a combined mobile (cellular) telephone/MP3 player (column 1 lines 13-22, column 2 lines 48-59, and column 7 lines 12-42), Baughan does not specifically disclose that the communication module is a long-range RF communication module.

In the same field of endeavor, Shanahan clearly show and discloses an electronic device 500 comprising, among other components, a receiver/transmitter circuit 520 (long-range communication module) coupled to a memory (not shown) through a processor 530 (figure 7 and column 9 line 61 - column 10 line 21).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a long-range communication module as taught by

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Shanahan in the device taught by Baughan for the purpose of providing cellular telephone communications.

Consider **claim 35**, and **as applied to claim 34 above**, Baughan, as modified by Shanahan, further disclose that the consumer (electronic) device 10, 30, 50 (figures 2, 3, and 5) comprises a display operable to display a web browser (user interface) within a user interface hardware 101 operably associated with a web browsing environment (figures 2 and 3, column 2 lines 3-9 and 36-41, column 3 lines 24-53, column 4 lines 36-51 and 58-63, column 5 lines 36-45, column 6 lines 52-59, and column 7 lines 23-38).

Consider **claim 37**, and **as applied to claim 36 above**, Baughan, as modified by Shanahan, further disclose that the device 10, 30, 50 is operable to pause the selected audio information at a time subsequent to receiving the incoming telephonic communication (column 4 line 58 - column 5 line 2).

Consider **claim 38**, and **as applied to claim 36 above**, Baughan, as modified by Shanahan, further disclose that the device 10, 30, 50 further comprises:

a display operable to display a user interface within a user interface hardware 101 (figures 2 and 3, column 2 lines 3-9 and 36-41, column 3 lines 24-53, column 4 lines 36-51 and 58-63, column 5 lines 36-45, column 6 lines 52-59, and column 7 lines 23-38); and

wherein the selected audio information includes an MP3 audio file received and stored within the store (storage medium) prior to receiving the incoming telephonic communication (column 2 lines 47-56, column 4 lines 30-51, column 4 line 58 - column 5 line 2, and column 6 lines 52-67).

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However, Baughan does not specifically disclose that the selected audio information is received via the long-range RF communication module.

In the same field of endeavor, Shanahan also show and discloses an electronic device 500 comprising, among other components, a receiver/transmitter circuit 520 (long-range communication module) operable to receive selected audio information to be stored in a memory (not shown) for subsequent use (figure 7 and column 9 line 61 - column 10 line 39).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a long-range communication module as taught by Shanahan in the device taught by Baughan for the purpose of receiving the selected audio information via cellular telephone communications.

Consider **claim 39**, and **as applied to claim 34 above**, Baughan clearly shows and discloses the claimed invention except that the processor module is further operable to start a playing of a different audio file in connection with receiving an indication of the incoming telephonic communication.

In the same field of endeavor, Shanahan clearly show and discloses an electronic device operable to play different music (audio) files in response to receiving incoming telephone calls in order to identify callers (abstract, figures 1 and 5-7, column 2 line 65 - column 3 line 40, column 7 line 60 - column 8 line 5, column 8 line 64 - column 9 line 2, and column 9 line 61 - column 10 line 17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to play a different audio file in response to receiving an incoming

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telephone call as taught by Shanahan in the device taught by Baughan for the purpose of identify a caller.

7. **Claim 21** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Baughan (U.S. Patent # 6,510,210 B1)** in view of **Shanahan (U.S. Patent # 6,496,692 B1)** as applied to **claim 16 above**, and further in view of **well known prior art (MPEP 2144.03)**.

Consider **claim 21**, and as applied to **claim 16 above**, Baughan, as modified by Shanahan, clearly show and disclose the claimed invention except that the short-range RF communication module 102 (figures 2 and 3) is operable to scan frequencies.

However, the Examiner takes Official Notice of the fact that short-range RF communication modules such as Bluetooth are well known in the art to operate by scanning frequencies for the purpose of locating an available frequency channel.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to slightly modify the device of Baughan, as modified by Shanahan, to allow the short-range RF communication module to scan frequencies for purpose of locating an available frequency channel.

#### ***Response to Arguments***

8. Applicant's arguments with respect to **claims 11, 16, and 34** have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any response to this Office Action should be **faxed to (703) 872-9306 or mailed to:**

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**Hand-delivered responses** should be brought to

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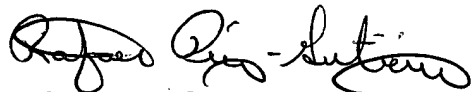
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11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rafael Perez-Gutierrez whose telephone number is (703) 308-8996. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marsha D. Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700 or call customer service at (703) 306-0377.



*Rafael Perez-Gutierrez*

R.P.G./rpg **RAFAEL PEREZ-GUTIERREZ**  
**PATENT EXAMINER**

February 5, 2005